

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL HOPKINS,

Plaintiff,

v.

INTEGON GENERAL INSURANCE
CORPORATION,

Defendant.

NO. 2:18-cv-01723-MJP

JOINT PRETRIAL ORDER

Parties submits the following Joint Pretrial Order pursuant to the Court's Local Civil Rule 16.1:

I. JURISDICTION

Defendant Integon General Insurance Corporation is an insurance company organized under the laws of the State of North Carolina. Plaintiff Mr. Hopkins is a resident of Washington State. Plaintiff filed suit in King County Superior Court on October 17, 2018. Defendant removed the case to the United States District Court, Western District of Washington, on November 30, 2018, citing 28 U.S.C. § 1332, § 1441 and § 1446. Plaintiff has not objected to the jurisdiction of the federal court. Accordingly, both parties agree that jurisdiction is appropriate based on diversity of citizenship of the parties.

II. CLAIMS AND DEFENSES

Plaintiff will pursue the following claims at trial:

1. Claim for insurance benefits under UIM
2. Negligence
3. Bad Faith
4. Violation of the Insurance Fair Conduct Act (IFCA)
5. Violation of the Consumer Protection Act (CPA)

Defendant will pursue the following affirmative defenses at trial:

1. Plaintiff sustained no extracontractual damages, and all alleged damages were caused by the underlying motor vehicle accident and not by Defendant's conduct.
2. Plaintiff's claim for breach of contract is barred because Defendant never breached the Policy, and even if some breach occurred, it caused no damages to Plaintiff.
3. Plaintiff's bad faith claim is barred because Defendant's conduct was reasonable at all times, Defendant did not breach the Policy, or any other duty to him, and even if some breach occurred, Plaintiff did not incur any damages proximately caused by any such alleged breach.
4. Plaintiff's claim for violation of the CPA is barred because Defendant did not commit unfair or deceptive act or trade practice, and did not otherwise violate any of the applicable Washington Administrative Code provisions, and even if some breach occurred, it did not proximately cause damage to any business or property interest of Plaintiff.
5. Plaintiff's claim under IFCA is barred because Defendant acted reasonably at all relevant times, did not unreasonably deny coverage or refuse to pay any benefit owed under an insurance policy, and even if some wrongful act occurred it did not proximately cause any damage to Plaintiff compensable under the statute.
6. Failure to mitigate damages.

7. Set-off for other payments.

III. ADMITTED FACTS

1. Plaintiff was the driver when his vehicle was struck by Pavielle Montes on April 23, 2016.
2. Ms. Montes was at fault for the April 23, 2016 accident.
3. Plaintiff was injured in the April 23, 2016 accident.
4. Ms. Montes was insured by Progressive Insurance Company (“Progressive”) at the time of the April 23, 2016 accident.
5. The liability limits of Ms. Montes’ policy with Progressive was \$25,000.
6. Progressive paid \$25,000 to Plaintiff for his injuries in the April 23, 2016 accident.
7. Plaintiff’s car sustained damage to the rear bumper and spare tire cover.
8. The total cost of repairs to Plaintiff’s vehicle was \$1,069.31.*
9. Plaintiff received \$1,069.31 to repair his car from Progressive, and he never made a claim to Integon for property damage from the accident.*
10. Mr. Hopkins incurred \$10,931.00 in medical expenses, treating from April 2016 through March 2019.**
11. \$10,000 of those medical expenses were paid by Defendant under Plaintiff’s Personal Injury Protection (“PIP”) coverage, which had limits of \$10,000.** These PIP payments covered all of Plaintiff’s medical treatment through July 17, 2018, and paid \$60 toward his appointment at Cascade Dizziness & Balance Therapy (Cascade) on September 6, 2018.**

* Plaintiff admits these facts, but objects to their admissibility under FRE 402 and 403 (*See also* Plaintiff’s *Motions in Limine* regarding damage to the vehicle). Plaintiff is not making a claim for property loss.

** Defendant objects to Plaintiff’s claim for expenses beyond \$9,886.00, which were the only disclosed expenses by Plaintiff in this lawsuit in his initial disclosures that were never supplemented. Dkt. #16-1, p. 154. Plaintiff admitted no additional medical expenses beyond \$9,886.00 during his deposition. Dep. at 69:16-71:0. Fed. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 37 (“If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”)

- 1 12. Plaintiff's remaining bills beyond the PIP for treatment related to the collision were:
2 \$90 for the portion of his September 6, 2018 treatment at Cascade that was unpaid
3 by PIP and two appointments at Swedish Neuroscience Institute (Swedish), on
4 September 11, 2018 (\$446) and March 12, 2019 (\$395). In total, Plaintiff Mr.
5 Hopkins was billed \$931 in medical costs beyond his PIP coverage.**
- 6 13. Plaintiff was insured by Defendant, and made a claim under the Underinsured
7 Motorist ("UIM") provision of his policy.
- 8 14. The UIM coverage in the policy contained limits of \$250,000.
- 9 15. In a letter dated March 26, 2018, Plaintiff demanded \$250,000 in UIM coverage
10 under the policy.
- 11 16. Defendant received the March 26, 2018 letter on April 3, 2018.
- 12 17. In response to Plaintiff's demand for the policy limits of \$250,000, Defendant
13 offered \$17,340.00 on April 24, 2018.
- 14 18. On April 25, 2018, Plaintiff re-confirmed his demand for \$250,000 in UIM
15 coverage.
- 16 19. Defendant retained a neurologist Dr. Kutsy to review Plaintiff's medical records for
17 the April 23, 2016 accident.
- 18 20. On August 24, 2018, Defendant received a report from Dr. Kutsy.
- 19 21. On September 19, 2018, Plaintiff submitted a notice of a lawsuit under the
20 Insurance Fair Conduct Act (IFCA). Defendant's claim notes show that the IFCA
21 notice was received on September 26, 2018.
- 22 22. On October 1, 2018, Defendant's claim file notes that it "will increase offer to
23 \$40k." Mary Gordon, the adjustor working on the case, called Plaintiff's counsel
24 and left a message that same day.
- 25 23. On October 17, 2018, Plaintiff filed this lawsuit, including IFCA claims.

24. On November 13, 2018, Defendant received a call back from Plaintiff's counsel.

Defendant offered Mr. Hopkins' \$40,000 to settle his claim.

25. Plaintiff never offered to settle the UIM claim below \$250,000.

III. ISSUES OF LAW¹

Plaintiff's proposed issues of law:

1. The value of the insurance benefits under the UIM portion of the policy.²
2. Whether Defendant is liable for negligence.
3. Whether Defendant is liable for bad faith.³
4. Whether Defendant is in violation of IFCA.⁴
5. Whether Defendant is in violation of the CPA.⁵
6. Whether Plaintiff is entitled to fees and costs under RCW 48.30.015 and/or RCW 19.86.090.⁶

IV. WITNESSES

On behalf of Plaintiff:

WITNESS	NATURE OF TESTIMONY	STATUS
Daniel Hopkins c/o PWRFL 1501 Fourth Ave, Suite 2800	Plaintiff Daniel Hopkins will testify concerning the collision, his injuries, as well as any facts that pertain to the claims at issue in this lawsuit.	Will testify

¹ Defendant makes a general objection to Plaintiff's proposed issues of law, as the issues stated are not legal issues but are instead factual. Defendant submits that the proper statement as to the legal issues are addressed in Defendant's proposed jury instructions and verdict form, which has been circulated to Plaintiff's counsel and will be filed with the Court prior to the Court's deadline.

² Defendant objects: The issue here is the amount of damages sustained by Plaintiff in the April 23, 2016 accident.

³ Defendant objects: The standard is whether Defendant acted in a manner that was unreasonable, frivolous or unfounded.

⁴ Defendant objects: The issues are whether Defendant unreasonably denied a claim for coverage or payment of benefits, and if so, whether Plaintiff sustained actual damages as a proximate cause of such unreasonable denial of claim of coverage or payment of benefits.

⁵ Defendant objects: The issues are not just whether Defendant violated the CPA, but also whether Plaintiff sustained damage to 'business or property' as a result of such violation.

⁶ Objection. Award of attorney's fees and costs is for the Court to decide after trial and is not an issue to decide during trial.

WITNESS	NATURE OF TESTIMONY	STATUS
Seattle, WA 98101 (206) 624-6800		
Irene Hopkins c/o PWRFL 1501 Fourth Ave, Suite 2800 Seattle, WA 98101 (206) 624-6800	Ms. Hopkins is Mr. Hopkins' wife and will testify regarding damages.	Will testify
Julia Hopkins c/o PWRFL 1501 Fourth Ave, Suite 2800 Seattle, WA 98101 (206) 624-6800	Julia Hopkins is Mr. Hopkins' daughter and will testify regarding damages.	Will testify
Sarah Hopkins c/o PWRFL 1501 Fourth Ave, Suite 2800 Seattle, WA 98101 (206) 624-6800	Sarah Hopkins is Mr. Hopkins' daughter and will testify regarding damages.	Will testify
Kevin Moore 7001 Seaview Ave NW Suite 160-643, Seattle, WA 98117 (425) 443-2896	Kevin Moore is Mr. Hopkins' neighbor and may testify regarding damages.	May testify
Steven Strzelec Strzelec Consulting Services 20719 NE 8th St. Sammamish, WA 98074 (206) 427-4322	Steven Strzelec will testify about claims-handling standards nationally and in Washington. He will testify that Integon failed to meet minimum industry standards for handling UIM claims. He will testify that Integon did not adequately investigate Mr. Hopkins' UIM claim and that Integon did not have adequate support to offer \$17,340 in general damages to Mr. Hopkins. He will testify that Integon's offer appears to be based on conjecture and speculation, not a reasonable investigation. He will testify that in determining how the collision and injury has impacted the insured's life, a claim handler needs to determine all of the injuries suffered in the collision, the pain and suffering caused by those injuries, and how those injuries and the	Will testify

WITNESS	NATURE OF TESTIMONY	STATUS
	<p>collision have impacted the insured's life and insured's ability to lead their normal pre-collision life.</p> <p>Mr. Strzelec will testify that Integon failed to meet its obligation to treat Mr. Hopkins reasonably. He may also be called to rebut testimony of Defendant's witnesses.</p>	
<p>Carolyn Larkin Taylor, MD Swedish Neuroscience Specialists 5350 Tallman Ave NW, Suite 400 Seattle, WA 98107 206-781-6320</p>	<p>Dr. Taylor will be called as a witness at trial and will testify regarding her care and treatment of Mr. Hopkins. Dr. Taylor will testify that Mr. Hopkins sustained injuries due to the collision. She will testify as to her diagnosis of and prognosis for Mr. Hopkins. She will testify that Mr. Hopkin's care and treatment at Swedish following the collision was reasonable and necessary. She may also be called to rebut testimony of Defendant's medical witness and to testify about the reasonableness and necessity of the medical bills.</p>	Will testify
<p>Lisa Eaton, DPT, OCS Cascade Dizziness and Balance PT 120 Lakeside Ave, Suite 210 Seattle, WA 98122 206-925-3762</p>	<p>Ms. Eaton will be called as a witness at trial and will testify regarding her care and treatment of Mr. Hopkins following the collision, and the reasonableness of such treatment. She may also be called to rebut testimony of Defendant's witnesses and to testify about the reasonableness and necessity of the medical bills.</p>	Will testify
<p>Mary Gordon⁷ National General Ins. Co. St. Louis, MO</p>	<p>Ms. Gordon was Integon's claims adjustor on the claim. Her deposition testimony was recorded and she lives out of state. Portions of her deposition may be played in Court.</p>	Will testify live and designated portions of her depositions may be played.

⁷ Defendant objects to portions of Ms. Gordon's deposition testimony, and asks that these objections be ruled upon prior to trial.

On behalf of Defendant:

WITNESS	NATURE OF TESTIMONY	STATUS
IGIC's Corporate Representative ⁸ c/o Eliot M. Harris Williams Kastner & Gibbs PLLC 601 Union Street, Suite 4100 Seattle, WA 98101 (206) 233-2977 eharris@williamskastner.com	Defendant's corporate representative may testify regarding the allegations contained in the Complaint filed in this matter, including but not limited to, the Policy, the Accident, and Defendant's handling, investigation, and analysis of Plaintiff's UIM claim.	Will testify
Mary Gordon c/o Eliot M. Harris Williams Kastner & Gibbs PLLC 601 Union Street, Suite 4100 Seattle, WA 98101 (206) 233-2977 eharris@williamskastner.com	Ms. Gordon may testify regarding the allegations contained in the Complaint filed in this matter, including but not limited to, the Policy, the Accident, and Defendant's handling, investigation, and analysis of Plaintiff's UIM claim.	May testify either in person or via video deposition
Pavielle Montes 2727 NE 125th Street, Apt. 9 Seattle, WA 98125 (206) 331-9658	Ms. Montes was a party to the Accident giving rise to Plaintiff's UIM claims. Ms. Montes may testify regarding the Accident.	Possible witness only
Melissa Weakland, MD Ballard Neighborhood Doctors 5416 Barnes Ave NW Seattle, WA 98107 (206) 297-7678	Dr. Weakland is a medical provider who administered treatment to Plaintiff following the Accident at issue in this matter. Dr. Weakland may testify relating to Plaintiff's claims, injuries and treatment.	Possible witness only
Chris Morrow, PT Pacific Balance & Rehabilitation Clinic 400 Mercer Street, Suite 302 Seattle, WA 98109 (206) 448-1906	Mr. Morrow is a physical therapist who administered treatment to Plaintiff following the Accident at issue in this matter. Mr. Morrow may testify relating to Plaintiff's claims, injuries and treatment.	Possible witness only
Julie Grove, MPT Cascade Dizziness PT PLLC 120 Lakeside Avenue Suite 210 Seattle, WA 98122 (206) 925-3762	Ms. Grove is a physical therapist who administered treatment to Plaintiff following the Accident at issue in this matter. Ms. Grove may testify relating to Plaintiff's claims, injuries and treatment.	Possible witness only

⁸ Plaintiff objects to Integon calling an unnamed and previously undisclosed witness. This violates the discovery rules and Defendants' own agreed motions in limine prohibiting calling undisclosed witnesses and admitting never before disclosed evidence. This "representative" – whoever he or she is – should not be permitted to testify.

WITNESS	NATURE OF TESTIMONY	STATUS
<p>Lisa Eaton, DPT, OCS Cascade Dizziness PT PLLC 120 Lakeside Avenue Suite 210 Seattle, WA 98122 (206) 925-3762</p>	<p>Ms. Eaton is a physical therapist who administered treatment to Plaintiff following the Accident at issue in this matter. Ms. Eaton may testify relating to Plaintiff's claims, injuries and treatment.</p>	<p>Possible witness only</p>
<p>Bart D. Simons, PT Greenlake Sports Physical Therapy 408 NE 72nd Street Seattle, WA 98115 (206) 524-5115</p>	<p>Mr. Simons is a physical therapist who administered treatment to Plaintiff following the Accident at issue in this matter. Mr. Simons may testify relating to Plaintiff's claims, injuries and treatment.</p>	<p>Possible witness only</p>
<p>Malorie A. Larson, DPT Greenlake Sports Physical Therapy 408 NE 72nd Street Seattle, WA 98115 (206) 524-5115</p>	<p>Ms. Larson is a physical therapist who administered treatment to Plaintiff following the Accident at issue in this matter. Ms. Larson may testify relating to Plaintiff's claims, injuries and treatment.</p>	<p>Possible witness only</p>
<p>Jena M. Peterson, ND Full Circle Natural Medicine 6869 Woodlawn Avenue NE, Suite 208 Seattle, WA 98115 (206) 535-8867 -or- Evergreen Center for Integrative Medicine 2008 NE 65th Street Seattle, WA 98115 (206) 729-0907</p>	<p>Ms. Peterson is a naturopathic practitioner who administered treatment to Plaintiff. Ms. Peterson may testify relating to Plaintiff's claims, injuries and treatment.</p>	<p>Possible witness only</p>
<p>Roman L. Kutsy, MD c/o Williams, Kastner & Gibbs, PLLC 601 Union St, Ste 4100 Seattle, WA 98101</p>	<p>Dr. Kutsy is a neurologist and his testimony will be based on his education, training, and experience, as well as a review of the pertinent materials in the current case. His testimony will also be based on his findings and opinions provided in his report dated August 21, 2018 and his record review addendum dated September 4, 2019.</p>	<p>Will testify</p>
<p>William P. Hight c/o Williams, Kastner & Gibbs, PLLC 601 Union St, Ste 4100 Seattle, WA 98101</p>	<p>Mr. Hight is an attorney who consults and testifies as an expert witness on insurance coverage interpretations and good faith handling of property and liability insurance claims. Mr. Hight's testimony will be based</p>	<p>Will testify</p>

WITNESS	NATURE OF TESTIMONY	STATUS
	on his education, training, and experience, as well as a review of the pertinent materials in the current case. His testimony will also be based on his findings and opinions provided in his report, dated September 15, 2019.	
Ann Rosato 1501 4th Avenue, Suite 2800 Seattle, WA 98101 Ph. (206) 624-6800	Ms. Rosato had phone calls and emails with Integon during the negotiation of the UIM claim at issue.	Will testify

V. EXHIBITS

Plaintiff's and Defendant's list of proposed trial exhibits are listed below. Pursuant to LCR 16(h)(6) and LCR 16(i)(6), the parties intend to present exhibits to the jury in electronic format. The admissibility and authenticity of the documents listed below shall be discussed at the Conference of Attorneys per CR 16(k). Prior to the Conference of Attorneys pursuant to CR 16(k), however, the parties shall advise each other with a list stating whether, as to each exhibit, the party will (1) stipulate to admissibility, (2) stipulate to authenticity but not admissibility, or (3) dispute authenticity and admissibility in compliance with LCR 16(j).

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
Plaintiff's Exhibits				
1.	Integon claim notes		FRE 402, 403, 802	
2.	Miscellaneous correspondence		FRE 402, 403, 802 (Exhibits 2-4, 2-5, 2-6, 2-7, 2-17, 2-29 (Rosato email dated May 4, 2018))	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
3.	MetroMile policy	X (in compliance with agreed MIL re permissible portions of policy)		
4.	Medical records from Cascade Dizziness and Balance	X		
5.	Medical records from Greenlake Sports Physical Therapy	X		
6.	Medical records from Swedish Medical Center	X		
7.	Medical records from Ballard Neighborhood Doctors	X		
8.	Medical records from Pacific Balance and Rehabilitation	X		
9.	FRE 1006 summary of bills from Cascade Dizziness and Balance		FRE 402, 403	
10.	FRE 1006 summary of bills from Greenlake Sports Physical Therapy		FRE 402, 403	
11.	FRE 1006 summary of bills from Swedish Medical Center		FRE 402, 403	
12.	FRE 1006 summary of bills from Ballard Neighborhood Doctors		FRE 402, 403	
13.	FRE 1006 summary of bills from Pacific Balance and Rehabilitation		FRE 402, 403	
14.	FRE 1006 Summary of medical bills from all providers		FRE 402, 403	
15.	FRE 1006 Summary of medical visits to all providers		FRE 402, 403	
16.	Photos			FRE 402, 403

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
17.	FRE 1006 Summary of PIP payments without diagnosis		FRE 402,403	
18.	FRE 1006 Summary of PIP payments without diagnosis		FRE 402, 403	
19.	Illustratives	Reserved	Reserved	Reserved
Defendant's Exhibits				
200.	Integon's Claim Notes for Plaintiff's claim (INTEGON 003080-3452 (minus redactions))	3080-86 only	FRE 402, 403, 803	
201.	Email to Metromile's/Integon's Jo Ann Munoz from Daniel Hopkins dated April 26, 2016, attaching photos of Pavielle Montes' vehicle (INTEGON 000055-58)		FRE 402, 403, 803, MIL's regarding photos of car.	
202.	Letter to Plaintiff from Jo Ann Munoz dated April 27, 2016, regarding coverage amounts (INTEGON 000030)	X		
203.	Letter to Hopkins from Beverly Evans, PIP Claims Rep dated April 28, 2016 regarding explanation of benefits and enclosing an Application for Benefits and Authorization to Disclose Health Information (INTEGON 000044-49)	X		
204.	Letter to Hopkins from Jo Ann Munoz dated May 4, 2016 (INTEGON 0000060)		FRE 402, 403, 803	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
205.	Plaintiff application for benefits (INTEGON 000067-69)	X		
206.	Letter from Ann Rosato to Jo Ann Munoz dated July 20, 2016, regarding representation of Plaintiff and request for PIP insurance documents (INTEGON 000178-81)	X		
207.	Letter to Ann Rosato dated July 21, 2016 (INTEGON 000181)	X		
208.	Exchange of letters and emails between Veronica Brouse and Plaintiff's attorneys regarding Plaintiff's IME scheduled for July 20, 2017, scheduling conflicts as a result of Plaintiff being out of town until September 2017, and request by Plaintiff's attorneys to schedule IME when Plaintiff returns (INTEGON 000549-550, 000561-562, 000571, 000573-573, 000575, 000634-637)	549-550, 571, 573, 575	561-562 (illegible); 634-637 (FRE 402, 403, and contains inadmissible reference to Irene Hopkins' case – agreed MIL)	
209.	Letter from Ann Rosato dated November 20, 2017 (INTEGON 000718-19)		FRE 402, 403, 803	
210.	Letters to Ann Rosato dated November 21, 2017 (INTEGON 000724-25)		FRE 402, 403, 803	
211.	Email from Fajardo dated February 7, 2018 (INTEGON 001001)	X		

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
212.	Email from Mary Gordon to Ann Rosato dated February 27, 2018, regarding assignment of Plaintiff's UIM claim to Mary Gordon and request for medical records and other information (INTEGON 001064)	X		
213.	Demand letter from Ann Rosato to Jo Ann Munoz dated March 26, 2018 (INTEGON 001217-1221)	X		
214.	Email from Mary Gordon to Richard Chodacki dated April 17, 2018 requesting authority for initial offer of \$16,000 with settlement range of \$16,000 to \$84,000 (INTEGON 001224-1226)	X		
215.	Email to Ann Rosato dated April 24, 2018 (INTEGON 001227-28)	X		
216.	Email from Ann Rosato dated April 25, 2018 (INTEGON 01233-1234)	X		
217.	Email exchange between Ann Rosato and Mary Gordon and Richard Chodacki dated May 4, 2018, May 1, 2018, April 25, 2018, and April 24, 2018 regarding Integon's initial offer, Cascade Dizziness medical record, continuation of negotiation, and securing independent medical review (INTEGON 001252-1253)	X		

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
218.	Email exchange between Mary Gordon to Cliff Wilson (SmithFreed) dated June 21, 2018 and June 20, 2018 regarding request to locate expert for dizziness/vertigo issue (INTEGON 001249)	X		
219.	Email from Ann Rosato dated June 22 and June 28, 2018 (INTEGON 001355-57)	X		
220.	Email exchange between Mary Gordon and Cliff Wilson dated July 3, 2018 and July 11, 2018 regarding request to locate neurologist or neuropsychologist (INTEGON 001289-1291, 001347-1354)	1289-91 and 1347-50 only	1321-54 (FRE 402, 403, 803)	
221.	Email exchange between Ann Rosato and Mary Gordon dated July 27, 2018 to July 31, 2018, regarding status of locating neurologist (INTEGON 001355-1357)		X Duplicative of Ex. 219	
222.	Email from Jessica Studebaker to Mary Gordon dated August 1, 2018 regarding request for records review by Dr. Kutsy (INTEGON 002878)		FRE 402, 403, 803	
223.	Assignment letter from Mary Gordon to Dr. Kutsy dated August 9, 2018 regarding request for records review and attaching medical records and additional information (INTEGON 002898)		FRE 402, 403, 803	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
224.	Email exchange between Mary Gordon and Ann Rosato dated August 21, 2018 regarding completion of records review and waiting for completion of report (INTEGON 001582-1583)	X		
225.	Email from Jessica Studebaker to Mary Gordon dated August 24, 2018 attaching Dr. Kutsy's report, CV, W9, and invoice (INTEGON 001584-1601)		FRE 402, 403, 803	
226.	Email from Mary Gordon to Ann Rosato dated November 15, 2018 regarding confirmation of \$40,000 to settle UIM claim (INTEGON 003071)	X		
227.	Transcript of the Recorded Statement made by Jo Ann Munoz to Progressive Claims dated April 25, 2016		FRE 402, 403, 803; discovery violation – not disclosed	
228.	Email from Jessica Studebaker (Fry Management) to Mary Gordon dated August 3, 2018 regarding record review with Dr. Roman Kutsy (INTEGON 001360-1366)		FRE 402, 403, 803	
229.	Letter from Ann Rosato to Insurance Commissioner & Integon dated September 19, 2018 regarding notice to Integon of lawsuit (INTEGON 001624)	X (but Defendant should use a legible copy)		

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
230.	Medical records from the University of Washington Medical Center		This is 800+ pages of medical records from 2011 collision; FRE 402, 403, 803	
231.	Medical records from Ballard Neighborhood Doctors	BND 6-7, 12, 17-19, 22-23, 28-31, 36-38, 41-72 (with health insurance information/payments redacted pursuant to agreed MIL regarding collateral source)	BND 0-4, 8-11, 13-16, 20-21, 24-27, 32-35, 39-40 (FRE 402, 403, collateral source rule, agreed MIL regarding health insurance payments)	
232.	Medical records from Cascade Dizziness & Balance Physical Therapy	As to: CDB 2-77-82 (with health insurance information/payments redacted pursuant to agreed MIL regarding collateral source)	CDB 0-1	
233.	Medical records from Swedish Medical Center	As to: SMG 9-22	as to: SMG 0, 7, 8, 23-36 (FRE 402, 403, collateral source rule, agreed MIL regarding health insurance coverage/payments)	
234.	Medical records from Pacific Balance and Rehabilitation	X		

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
235.	Medical records from Greenlake Sports Physical Therapy	GSP 2-26, 33	GSP 0-1, 27- 32, 34, 36-73 (FRE 402, 403, collateral source rule, agreed MIL regarding health insurance payments)	
236.	Progressive Direct Insurance's vehicle repair estimate dated May 31, 2016		FRE 402, 403, 803	
237.	Washington State Patrol's Vehicle Collision Report (Report No. M0008582)		FRE 402, 403, 803	
238.	Photos of Plaintiff's and Pavielle Montes' vehicles after the accident (INTEGON 001371-1390)		FRE 402, 403 and MILs	
239.	Other photos of accident		FRE 402, 403 and MILS	
240.	Plaintiff's Initial Disclosures filed in this action		FRE 403, 403, 802	
241.	Plaintiff's Discovery Responses in this lawsuit		FRE 402, 403, 802	
242.	Expert report of Dr. Roman Kutsy, MD dated August 21, 2018 (INTEGON 001592- 001601)		FRE 402, 403, 802	
243.	Addendum to expert report of Dr. Roman Kutsy, MD dated September 4, 2019 regarding records review of Plaintiff's August 2011 motor vehicle accident		FRE 402, 403, 802	
244.	Expert report of William Hight dated September 15, 2019		FRE 402, 403, 802	
245.	Declaration of Pavielle Montes		FRE 403, 403, 802	

No.	Exhibit	Stipulated Authentic and Admissible	Authenticity Stipulated, Admissibility Disputed	Authenticity and Admissibility Disputed
246.	Deposition transcript of Plaintiff Daniel Hopkins taken April 30, 2019		FRE 402, 403, 802	
247.	Deposition transcript of Stephen Strzelec taken September 23, 2019		FRE 402, 403, 802	
248.	Deposition transcript of Dr. Carolyn Taylor taken August 27, 2019		FRE 402, 403, 802	
249.	Deposition transcript of Dr. Roman Kutsy taken October 3, 2019		FRE 402, 403, 703, 802	
250.	Deposition transcript of William Hight taken October 1, 2019		FRE 402, 403, 703, 802	
251.	Plaintiff settlement agreement in Hyland lawsuit		FRE 402, 403, 404, 408, 802	
252.	Plaintiff discovery responses in Hyland lawsuit		FRE 402, 403, 404, 802	
253.	Hyland pleadings		FRE 402, 402, 404, 802	
254.	Preliminary Estimates to repair Plaintiff's vehicle		FRE 402, 403, 802, MIL regarding damage to car	
255.	Out of pocket expenses documents		These are Mrs. Hopkins medical records. FRE 402, 403, 802, MIL regarding Irene Hopkins	
256.	Photos of vehicle disclosed by Plaintiff in discovery in this lawsuit		FRE 402, 403, MILs	
257.	Illustratives	Reserved	Reserved	Reserved

VI. DEPOSITION DESIGNATIONS

Plaintiff offers the following portions of the deposition of Mary Gordon, dated May 10, 2019, at trial:

1. Page 6, lines 15-16
2. Page 6, line 22 to page 7, line 15
3. Page 7, line 23 to page 8, line 5
4. Page 11, line 11 to page 13, line 3
5. Page 13, line 22 to page 16, line 17
6. Page 17, line 24 to page 18, line 13
7. Page 19, line 21 to page 21, line 20
8. Page 21, line 25 to page 22, line 19
9. Page 24, lines 9-15
10. Page 24, line 21 to page 25, line 1
11. Page 33, line 23 to page 34, line 10
12. Page 34, line 18 to page 41, line 23
13. Page 42, lines 7-22
14. Page 42, line 24 to page 43, line 2
15. Page 43, line 13 to page 44, line 8
16. Page 44, line 10 to page 45, line 2
17. Page 45, line 24 to page 46, line 22
18. Page 47, lines 14-16
19. Page 48, line 1 to page 52, line 17
20. Page 54, line 15 to page 55, line 24
21. Page 57, line 18 to page 65, line 1
22. Page 69, line 3 to page 70, line 1

Plaintiff offers the following counter-designations of the deposition of Mary Gordon, dated May 10, 2019, at trial:

- A. Page 24, lines 3-8
- B. Page 24, lines 16-20
- C. Page 57, lines 13-17⁹

A highlighted copy of the deposition transcript accompanies this statement.

Defendant offers the following portions of the deposition of Mary Gordon dated May 10, 2019, at trial:

1. Page 10, line 2 to page 11, line 10
2. Page 13 lines 4-21
3. Page 16, line 18 to page 17, line 22
4. Page 18, lines 14-23
5. Page 22, line 20 to page 24, line 2

⁹ This designation is conditional upon the Court's ruling on Plaintiff's objections to certain testimony designated by Defendant.

6. Page 41, line 24 to page 42, line 6
7. Page 43, lines 3-12
8. Page 45, line 3-15 (waive objection)
9. Page 46, line 23 to page 47, line 7
10. Page 52, line 18 to page 54, line 4
11. Page 55, line 25 to page 57, line 12¹⁰
12. Page 65, line 6-20
13. Page 66, line 15 to page 67, line 10

A highlighted copy of the deposition transcript accompanies this statement.

VII. RESERVATION OF RIGHTS

Defendant reserves all objections as noted during Ms. Gordon's deposition. Defendant also reserves the right to call at trial any witnesses identified by Plaintiff and/or witnesses who have been disclosed during deposition or discovery. Defendant reserves the right to amend this statement at any time up to and including the time of trial. Defendant reserves the right to use photos, anatomic diagrams, maps, models, timelines, summary charts, demonstrative exhibits, and other documents at trial. Defendant reserves the right to use as exhibits any of the exhibits identified in Plaintiff's exhibit lists. Defendant reserve the right to use any deposition transcripts disclosed by Plaintiff. Defendant reserves the right to offer any exhibit or document necessary to present its case at trial

ACTION BY THE COURT

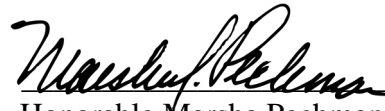
- (a) This case is scheduled for trial before a jury on October 5, 2020 at 9:00 am.
- (b) Trial briefs shall be submitted to the Court on or before April 28, 2020.
- (c) Jury instructions requested by either party shall be submitted to the Court on or before April 28, 2020.

¹⁰ Plaintiff's object to this testimony under FRE 402 and 403 and Plaintiff's Motion in Limine No. 13.

(d) Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before April 28, 2020.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 2nd day of October, 2020.


Honorable Marsha Pechman
United States District Judge

**PETERSON | WAMPOLD
ROSATO | FELDMAN | LUNA**

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Insurance Corporation

Gordon, Mary M.

5/10/2019

Condensed Transcript

Plaintiff's Designations

Defendant's Designations

Plaintiff's Counter-Designations

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1 IT IS HEREBY STIPULATED AND
 2 AGREED by and between counsel for the Plaintiff and
 3 counsel for the Defendant that this deposition may
 4 be taken by Susan J. Pybas, CCR, No. 1446(T), a
 5 Certified Court Reporter, thereafter transcribed
 6 into typewriting, with the signature of the witness
 7 being expressly reserved.
 8 VIDEOGRAPHER: We're on the record.
 9 Today's date is May 10th, 2019, and the time is
 10 approximately 12:04 p.m.
 11 This is the videorecorded deposition
 12 of Mary Gordon in the matter of Daniel Hopkins vs.
 13 Integon General Insurance Corporation, Case No. 218
 14 CV 01723 in the United States District Court,
 15 Western District of Washington and Seattle. This
 16 deposition is being held at Alaris Litigation
 17 Services in St. Louis, Missouri.
 18 The reporter's name is Sue Pybas. My
 19 name is John Niehaus. I'm a legal videographer. We
 20 are here on behalf of Seattle Deposition Reporters.
 21 Will Counsel please introduce
 22 yourself for the record.
 23 MR. HARRIS: Eliot Harris --
 24 MS. ROSATO: Ann Rosato.
 25 Oh, go ahead, Eliot.

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1 MR. HARRIS: Sorry. Go ahead, Ann.
 2 MS. ROSATO: Ann Rosato for the
 3 plaintiff.
 4 MR. HARRIS: Eliot Harris for the
 5 defendant.
 6 VIDEOGRAPHER: Will you please swear
 7 in the witness?
 8 MARY GORDON,
 9 of lawful age, having been produced, sworn, and
 10 examined on the part of the Plaintiffs,
 11 testified as follows:
 12 (Start time of deposition: 12:04 p.m.)
 13 EXAMINATION
 14 BY MS. ROSATO:
 15 Q. Good afternoon, Ms. Gordon.
 16 A. Good afternoon.
 17 Q. Can you hear me okay? I know we're remote
 18 so it can be a little difficult.
 19 A. Yes, I can hear you fine. Can you hear me
 20 all right?
 21 Q. I can. You're very clear. Thank you.
 22 Q. Could you please state and spell your last
 23 name for the record?
 24 A. Mary Gordon, G-o-r-d-o-n.
 25 Q. And, Ms. Gordon, you right now are located

Page 7

1 in St. Louis, Missouri; is that correct?
 2 A. That's correct.
 3 Q. Is that where you live?
 4 A. Yes.
 5 Q. And also where you work from?
 6 A. Yes.
 7 Q. Okay. Have you been deposed before?
 8 A. Yes.
 9 Q. How many times?
 10 A. I don't know exactly. At least four or
 11 five.
 12 Q. Can you just generally tell me sort of the
 13 circumstances under which you have been deposed
 14 before?
 15 A. Other claims.
 16 Q. Okay. Has it all -- have all the
 17 depositions been during your employment with the
 18 company you currently work for?
 19 A. No. I've had --
 20 Q. Okay.
 21 A. -- depositions for my former employer as
 22 well.
 23 Q. Okay. And we'll get to your employment
 24 background in just a moment, but let me ask you
 25 this:

Page 8

1 Have any of those four or five depositions
 2 that you've given in the past been related to claims
 3 when there's an allegation by the insurance company
 4 of failure to act in good faith?
 5 A. Yes.
 6 Q. Okay. How many of those four or five have
 7 had those claims alleged?
 8 A. Just one that I can remember.
 9 Q. Do you remember how long ago you gave that
 10 particular deposition?
 11 A. That one was within the past year.
 12 Q. Okay. The deposition was?
 13 A. Yes.
 14 Q. Did you work for Integon at the time of
 15 that deposition?
 16 A. I worked for National General. I'm not
 17 sure which underwriting company it was.
 18 Q. All right. And you said that that
 19 particular deposition involved allegations of bad
 20 faith. Was your claims adjusting at issue in that
 21 case?
 22 A. No.
 23 Q. Is -- tell me the role you played in that
 24 case; why you were deposed.
 25 A. I was the adjuster who took over handling

Page 9

1 of the claim after a demand was already made.
 2 Q. Do you know the name of the claimant in
 3 that case?
 4 A. It was -- the last name was Wunderlich.
 5 Q. Wunderlich?
 6 A. I don't -- I think -- I'm not sure about
 7 the first name. Jeffrey, maybe.
 8 Q. Do you know where that case was filed?
 9 A. Jackson County.
 10 Q. What state?
 11 A. Missouri. Sorry.
 12 Q. That's okay.
 13 Is that case still ongoing, or has it been
 14 resolved, if you know?
 15 A. It's been resolved.
 16 Q. Great. So I'm going to assume, since
 17 you've been deposed four or five times, that you
 18 know the way this process works and that I don't
 19 need to go over that with you.
 20 If you need a break at any time, feel free
 21 to take one. Just let me know when you're ready to
 22 do that. I do not take lengthy depositions so
 23 you're not going to be there for several hours. I
 24 would expect an hour and a half to two at the most.
 25 A. Okay. Thank you.

Page 10

1 Q. You're welcome.
 2 Give me, if you would, beginning just with
 3 your education, a brief sort of sketch of your
 4 educational background beginning with high school
 5 and where you graduated from.
 6 A. I graduated from Mary Institute. It is a
 7 school in St. Louis. I went to Mizzou, which is
 8 University of Missouri in Columbia, for one year,
 9 and then I transferred to the University of Missouri
 10 in St. Louis. Graduated from there with a
 11 bachelor's degree in business administration.
 12 Then I -- after I started working in
 13 claims, I received an associate in claims and then I
 14 started work on a master's and earned my MBA from
 15 Webster University here in St. Louis.
 16 Q. And what university did you say?
 17 A. Webster.
 18 Q. The MBA?
 19 A. The MBA, Webster.
 20 Q. Webster.
 21 And I'm just going to back up. What year
 22 did you graduate from high school?
 23 A. 1979.
 24 Q. And then what year did you get your
 25 bachelor's degree in business administration?

Page 11

1 A. 1983.
 2 Q. And what year did you get your MBA?
 3 A. '92.
 4 Q. Okay. So then you mentioned, after
 5 getting your bachelor's degree in business
 6 administration, that you started -- did you say
 7 working in claims?
 8 A. I did. I -- I started working in claims.
 9 After I started working in claims is when I earned
 10 my associate's in claims.
 11 Q. Okay. Tell me first what was the first
 12 company you worked for?
 13 A. I first worked for CF Knight Drug Company
 14 after I graduated from college, and then I started
 15 working for Crum & Forster personal insurance.
 16 Q. Okay.
 17 A. And then went to Progressive Insurance and
 18 then National General.
 19 Q. What year did you get your associate in
 20 claims?
 21 A. I'm not really sure. It was in the late
 22 '80s or maybe '90.
 23 Q. When you started working at -- I think you
 24 said Crum & Forster? Do I have that right?
 25 A. Yes.

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1 Q. Tell me what you were doing there.
 2 A. I was handling claims there as well.
 3 Q. What kind of claims?
 4 A. Homeowner and auto claims.
 5 Q. And generally give me the basic years that
 6 you worked at Crum & Forster.
 7 A. That was from 1985 to 1990.
 8 Q. Did you ever handle any claims in
 9 Washington when you located -- or when you worked at
 10 Crum & Forster?
 11 A. I don't remember. I know I handled
 12 multiple states, but I don't believe Washington. I
 13 don't think there were any coastal states, or at
 14 least not West Coast states. It's a long time ago,
 15 so I don't remember.
 16 Q. Did -- sure. I understand.
 17 When did you start working at Progressive?
 18 A. In 1990.
 19 Q. How long did you work there?
 20 A. Almost 25 years.
 21 Q. And where were you located when you worked
 22 at Progressive?
 23 A. Here in St. Louis.
 24 Q. What kind of claims did you work on?
 25 A. I had mobile home claims and auto claims

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1 and commercial auto claims.
 2 Q. Why did you leave Progressive?
 3 A. I was solicited by National General.
 4 Q. Okay. What was your job title at
 5 Progressive when you left?
 6 A. I was a claims specialist lead.
 7 Q. As a claims specialist lead, were you
 8 still day-to-day adjusting your own claims, or were
 9 you supervising other adjusters?
 10 A. Yeah, I was strictly handling claims. I
 11 did not have any supervisory capacity. It was just
 12 a job title.
 13 Q. Okay. And did you have an authority level
 14 at Progressive as a claims specialist lead?
 15 A. I did. I don't recall what that was.
 16 Q. Do you know if it was over \$100,000?
 17 A. It was not.
 18 Q. Okay. So your authority level at
 19 Progressive, even after 25 years, was still \$100,000
 20 or under?
 21 A. Yes.
 22 Q. Okay. When you were at Progressive for
 23 those 25 years -- so until about 2015; is that
 24 right?
 25 A. Yes.

Page 14

1 Q. Okay. Did you handle Washington claims?
 2 A. No, strictly Missouri claims.
 3 Q. Okay. Is it fair to say that by 2015,
 4 when you left Progressive and went to National
 5 General, you had handled very few and maybe no
 6 Washington State claims at that point in time?
 7 MR. HARRIS: Object to the form.
 8 You can answer.
 9 A. Yes.
 10 BY MS. ROSATO:
 11 Q. And then do you -- do you remember
 12 generally when you started at National General, like
 13 the month?
 14 A. April.
 15 Q. 2015?
 16 A. Yes.
 17 Q. Could you explain to me because I don't
 18 understand it the -- I've seen paperwork for this
 19 claim that says Metromile, National General, and
 20 Integon.
 21 Can you explain to me the relationship
 22 between those three companies?
 23 A. National General purchased other
 24 companies. Metromile was one of them, and they
 25 converted those to National General underwriting

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1 companies. So Integon is one of the National
 2 General underwriting companies.
 3 Does that help?
 4 Q. Yes.
 5 When did National General purchase
 6 Metromile, if you know?
 7 A. I don't know.
 8 Q. Does the name Metromile, does that company
 9 still exist and do business?
 10 A. As far as I know, National General
 11 purchased it. That all happened before I started
 12 working there, so I really don't know --
 13 Q. Okay.
 14 A. -- how that all transpired. I think that
 15 they -- they no longer exist, except for with
 16 National General, but I can't say for sure.
 17 Q. Okay. Your employer, is that National
 18 General?
 19 A. Yes.
 20 Q. That's who writes your paychecks?
 21 A. Yes.
 22 Q. Okay. When you were hired at National
 23 General in April of 2015, what was your job title?
 24 A. Large loss adjuster.
 25 Q. And describe for me generally -- well, let

Page 16

1 me ask you this first. Is that still your job title
 2 today?
 3 A. Yes.
 4 Q. Has there been any change? Have you --
 5 have you had different jobs since you've been at
 6 National General? Has that been the consistent job
 7 the whole time you've been there?
 8 A. That's been the job since I've been there.
 9 Q. Okay. Tell me just generally, as a large
 10 loss adjuster, what your job duties are.
 11 A. I handle and pay claims.
 12 Q. Okay. What types of claims?
 13 A. Casualty claims for personal and
 14 commercial auto. I think I've had one liability
 15 claim for homeowners.
 16 Q. So the vast majority of your work, it
 17 sounds like, is in auto collision claims?
 18 A. Yes.
 19 Q. Okay. Do you have an authority level at
 20 National General?
 21 A. Yes.
 22 Q. What is that?
 23 A. 75,000.
 24 Q. Has that changed since you've been there,
 25 or has that been the same authority level the whole

Page 17

1 time you've been there?
 2 A. Same authority level. It's tied to the
 3 title to the job.
 4 Q. Okay. Tell me -- well, let me ask you
 5 this: Before the Hopkins claim, while working at
 6 National General, had you ever handled another claim
 7 in Washington?
 8 A. Yes.
 9 Q. How many do you think you handled in there
 10 -- how long have you been there now, almost -- is it
 11 five years? Is that --
 12 A. Four, four years.
 13 Q. Four years.
 14 How many Washington claims do you think
 15 you handled in those four years?
 16 A. I really don't know. Not many. Maybe a
 17 handful.
 18 Q. Less than ten?
 19 A. Probably.
 20 Q. And Mr. Hopkins' claim would be one of
 21 those ten?
 22 A. Yes.
 23 Q. Or less? Okay.
 24 Tell me what the large loss unit at
 25 National General is.

Page 18

1 A. I'm not sure what you're looking for.
 2 It's a group of adjusters that handle casualty
 3 claims.
 4 Q. Okay. By titling it the "large loss
 5 unit," what types of claims go to those adjusters?
 6 A. They're the ones that are more significant
 7 or -- there's a criteria for claims that come over.
 8 There's a triage criteria that I -- I can't remember
 9 all of the criteria.
 10 Our managers will talk to the other
 11 managers and -- and accept claims in on transfer or,
 12 you know, serious claims will get first notice of
 13 loss, like fatalities, things like that.
 14 Q. Who is your manager?
 15 A. My manager right now is Jennifer Currie.
 16 Q. Do you know how to spell the last name?
 17 A. I do. C-u-r-r-i-e.
 18 Q. Okay. Has Jennifer been your manager all
 19 four years, or have you had other managers?
 20 A. I've had other managers.
 21 Q. Do you remember who your manager was when
 22 this claim was assigned to you?
 23 A. It was Richard Chodaki.
 24 Q. Okay. Where has -- is he still at
 25 National General?

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1 A. No, he is not.
 2 Q. Do you know where he is now?
 3 A. I know he's living in Michigan, but other
 4 than that, I don't know.
 5 Q. Do you know why he left National General?
 6 A. I believe it wasn't a good fit for him.
 7 Q. Do you know if he's still working, or did
 8 he retire?
 9 A. I believe he's -- he's still working or
 10 intends to still work if he's not.
 11 Q. Okay. You said that there is a criteria
 12 for claims that go to the large loss unit, and I
 13 think you said you don't know exactly what those
 14 are.
 15 Do you know generally what some of the
 16 criteria are?
 17 A. Some of them if they -- they're based on
 18 the description of the injury. They are based on
 19 what the reserve might be, complex -- complex
 20 liability coverage, things like that.
 21 Q. How many adjusters are in the large loss
 22 unit at National General?
 23 A. There are nine or ten.
 24 Q. Who is Christina May?
 25 A. She's another employee at National

Page 20

1 General. I don't know what she does.
 2 Q. Do -- do you know her title?
 3 A. No. I'm a remote employee, so I really
 4 don't know, you know, the other adjusters who work
 5 at National General.
 6 Q. Okay. I mean do you know anything about
 7 her, like, what her authority level is, if she's
 8 above you, below you?
 9 A. I -- I really don't know. I believe she's
 10 another adjuster. That's all I -- I know. She
 11 might be in the -- injury handler. I'm not sure.
 12 Q. Okay. So when you took over the Hopkins
 13 claim, did you see any of the claim diary entries
 14 that Christina May had made before you took over?
 15 A. I don't typically look at the diaries that
 16 other people set when I look at a claim, so probably
 17 not.
 18 Q. Why don't you typically do that?
 19 A. It's not something that I typically use in
 20 my investigation of a claim.
 21 Q. Okay.
 22 A. I'll look at the claim notes and things
 23 like that, but the diaries really don't necessarily
 24 mean anything.
 25 Q. Okay. Did you look at any of Christina

Page 21

Page 23

1 May's claim notes when you took over Mr. Hopkins'
2 claim?

3 A. I read all the claim notes when I took
4 over handling, so I'm sure I did. If she -- if she
5 had a note in there, I would have read it.

6 Q. Okay. Tell me how you're distinguishing
7 claim notes versus diary notes, because it seems
8 that you made a distinction there.

9 A. I think that the way the notes come to
10 you, everything is printed out. There is a -- I
11 think a note in there that says, you know,
12 "Christina May changed the diary" or something like
13 that. I don't necessarily -- I don't read those
14 because they really have no meaning as far as the
15 investigation of the claim goes.

16 Does that make sense? Is that what you --

17 Q. Well, any substantive notes that Christina
18 May would have made about the claim, would you have
19 reviewed those notes?

20 A. Yes.

21 Q. Okay. And for you, they don't appear
22 printed.

23 Do they appear just on a computer screen?

24 A. Yes.

25 Q. Okay. Did you get any training at

Page 22

Page 24

1 National General regarding Washington State law,
2 statutory law or administrative code about handling
3 claims in the state of Washington?

4 A. I did not receive any formal training in
5 Washington.

6 Q. Did -- did National General -- you said
7 you didn't get any formal training in Washington. I
8 want to make sure you understand my question.

9 Did National General provide to you any
10 training about handling claims in Washington State
11 and complying with Washington law?

12 A. No.

13 Q. Have you had any training in your career
14 as an insurance adjuster regarding handling claims
15 in Washington and Washington statutes and
16 administrative code regulations that apply to
17 insurance claims?

18 A. I haven't received any formal training in
19 those areas, no.

20 Q. Okay. So you say "no formal training,"
21 which leads me to think you had some type of
22 training.

23 So describe for me what kind of training,
24 formal or otherwise, that you've had for adjusting
25 claims in Washington.

1 A. In handling of the claims and working with
2 defense counsel, we also have a toolkit tool that

3 will allow us to look at different, you know,
4 factors in Washington like the -- the negligence
5 laws and things like that. So it's more of a
6 self-study and on-the-job working with -- with
7 others to understand the workings of the law and --
8 and requirements in Washington.

9 Q. What's the toolkit you're talking about?

10 A. It's -- it just compiles information of,
11 like I said, about, you know, comparative fault and
12 things like that.

13 Q. What do you -- what's compiling? You said
14 "it compiles." Are we talking about a computer
15 program or --

16 A. Yes, it's a -- it's a computer site that
17 has information on state information.

18 Q. And is that something you can access from
19 your computer at National General?

20 A. Yes.

21 Q. Okay. You said it compiles Washington
22 law, and you gave examples of comparative negligence
23 and negligence.

24 Does it also have Washington law for you
25 on fair claims handling practices in the state of

1 Washington?

2 A. Yes.

3 Q. Have you ever reviewed, in the toolkit
4 you're describing that you can access at National
5 General on your computer, Washington laws regarding
6 fair claims handling?

7 A. I don't know if I accessed it from toolkit
8 or not, so I can't say.

9 Q. Do you know if you've ever accessed
10 Washington fair claims handling statutes and
11 administrative code regulations at all?

12 A. On the computer, I'm not sure if I have.
13 I don't recall. I know I've seen it in writing
14 before. I don't recall if I have researched that on
15 the computer or not.

16 Q. Okay. Where have you seen it in writing?

17 A. I had it -- you know, I don't -- I'm not
18 -- I can't really even remember. I think I may have
19 reviewed it in -- I'm not sure. I'm sorry. I don't
20 remember.

21 Q. Do you know if before you were assigned
22 Mr. Hopkins' claim, you had ever reviewed either on
23 paper, on a computer, Washington law regarding fair
24 claims handling practices in the state of
25 Washington?

Page 25

Page 27

1 A. I don't remember if I have or not.

2 Q. Okay. Do you feel like, sitting here

3 today, you're familiar with Washington regulations

4 regarding fair claims handling practices in the

5 state of Washington?

6 MR. HARRIS: Object to the form.

7 You can answer.

8 A. Okay. I'm -- I'm familiar with them

9 generally. I could not cite them or tell you any

10 specifics.

11 BY MS. ROSATO:

12 Q. If I went over some of those regulations

13 with you, could you tell me, yes, that is a

14 Washington regulation or not?

15 A. Maybe.

16 Q. Okay. Tell me how you are compensated by

17 National General.

18 A. I get a paycheck. I'm not sure what

19 you're looking for.

20 Q. Oh. Are you a salaried employee?

21 A. Yes.

22 Q. Okay. And you get a paycheck every two

23 weeks or 15 days; is that right?

24 A. Every two weeks.

25 Q. Okay. In addition to your salary, does

1 of that nature affects my bonus at all.

2 Q. Okay. Thanks.

3 I'm going to ask you -- I'm going to

4 follow up on the topic I just ended with, and I'm

5 going to ask you about a few Washington regulations,

6 and let me know -- I'll ask you questions as I go.

7 Do you understand that in Washington,

8 there is a statute that requires an insurance

9 adjuster to acknowledge and act reasonably promptly

10 upon claim communications?

11 A. Yes.

12 Q. Okay. Did -- do you know that in

13 Washington you have to respond to claim

14 communications within ten days?

15 MR. HARRIS: Object to the form.

16 A. Would you repeat that, please?

17 BY MS. ROSATO:

18 Q. Sure. Do you know whether there's a

19 regulation in Washington that requires you to

20 acknowledge and respond to claim communications

21 within ten days?

22 MR. HARRIS: Object to the form.

23 A. I do -- I do know you need to respond if

24 the communication requires a response, but I didn't

25 know there was a ten-day requirement.

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Page 28

1 National General provide any additional compensation

2 in the form of bonuses, anything like that?

3 A. There is a bonus at the end of the year,

4 yes.

5 Q. Okay. How is the bonus -- what are the

6 factors that are taken into consideration for that

7 bonus?

8 A. I really don't know. The only thing I

9 know about that is there was one year there was a

10 reserving issue where we had to post a lot of

11 reserves, and that reduced the amount of the bonus.

12 Other than that, I think it's discretionary on our

13 managers. I really don't know.

14 Q. Okay. Have you ever -- have you ever seen

15 a list of criteria that National General uses to

16 determine how bonuses are calculated?

17 A. No. I don't even know if one exists.

18 Q. Okay. Do you know or has anyone at

19 National General ever told you that there's any

20 financial incentive based on how claims are resolved

21 for you personally?

22 A. No.

23 Q. You don't know, or you've just never been

24 told?

25 A. I've never been told that my -- anything

1 BY MS. ROSATO:

2 Q. Okay. Do you know if there's a regulation

3 in Washington that requires an insurance adjuster to

4 attempt in good faith to make prompt, fair, and

5 equitable settlements when liability is reasonably

6 clear?

7 MR. HARRIS: Object to the form.

8 A. Yes.

9 BY MS. ROSATO:

10 Q. You do that?

11 A. I believe so, yes.

12 Q. Okay.

13 A. You know, I -- it is a reasonable

14 requirement. Whether I have read that before or

15 know it's specific to Washington, I guess I do not

16 know that.

17 Q. Okay. Fair enough. Thank you.

18 Do you know whether there's a regulation

19 in Washington that requires an insurance adjuster to

20 communicate the results of an investigation timely?

21 MS. ROSATO: Object to the form.

22 A. I believe that makes sense, but I don't

23 know the specific --

24 BY MS. ROSATO:

25 Q. Okay. Do you know -- okay. Do you know

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Page 31

1 whether there's a -- a requirement in Washington for
2 an insurance company to treat its own policy
3 holders' interests with equal regard to the
4 insurance companies' interests?

5 MR. HARRIS: Object to the form.

6 A. I am not certain that is written, but
7 again, it makes sense that it would be.

8 BY MS. ROSATO:

9 Q. Okay. Okay. Can you tell me -- other
10 than meeting with your attorney to prepare, tell me
11 everything that you did to prepare for today's
12 deposition.

13 A. I -- I met with our attorney and we
14 reviewed notes, but that's the only thing I did. I
15 didn't look at the claim independently.

16 Q. Okay. When you met with your attorney --
17 and I don't want to know anything you talked about
18 -- but when you met with -- and I assume you're
19 referring to Mr. Harris; is that right?

20 A. Yes.

21 Q. Okay. When you met with Mr. Harris and
22 you reviewed notes, did you review the claim notes
23 that were essentially printed out?

24 A. I reviewed a portion of them, but I didn't
25 review all of them.

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1 Q. Okay. Do you know what portion you
2 reviewed?

3 A. I reviewed a portion of them that applied
4 to my handling.

5 Q. Okay. Do you know if when you reviewed
6 those claim notes pertaining to your handling that
7 you were looking at claim notes that had what I'll
8 call "redacted areas," so parts that were blacked
9 out?

10 A. Yes.

11 Q. Okay. Were there any parts that you
12 looked at that were blacked out and you needed to be
13 able to be prepared for today to go look at the
14 non-black-out areas?

15 MR. HARRIS: Object to the form.

16 A. We did look a couple of those. I don't
17 think we looked at all of them.

18 BY MS. ROSATO:

19 Q. Okay. And did -- did looking at those
20 help prepare you for today's deposition?

21 A. Possibly.

22 Q. Did it help refresh your recollection
23 about things that had happened earlier last year?

24 A. Yes. I don't know if those specific ones
25 did, but, yeah, looking at the claim notes refreshed

1 my memory in -- in the areas of some of the
2 handling.

3 Q. Okay. But it sounds like at least in a
4 few instances, or maybe even only one, you did need
5 -- you noticed there was something blacked out and
6 you needed to go look at the non-black-out
7 material to help get prepared for today.

8 MR. HARRIS: Object to the form.

9 A. I looked at it. I don't know whether it's
10 going to be helpful or not.

11 Does that make sense? I mean, I don't
12 know what you're going to ask. So I -- I did look
13 at it.

14 BY MS. ROSATO:

15 Q. Okay. Okay. Fair enough.

16 Did you talk with anyone -- not including
17 Mr. Harris, did you talk with anyone at National
18 General to prepare for today?

19 A. No.

20 Q. Okay. And it sounds like you didn't, on
21 your own without Mr. Harris present, review anything
22 in writing to prepare for today; is that right?

23 A. That's right.

24 Q. Okay. Did you look at any National
25 General policies, procedures, anything like that to

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1 prepare for today?

2 A. No.

3 Q. Let me ask you this: Does -- you've
4 mentioned toolkit. Does National General have
5 written guidelines, policies, procedures for
6 adjusters like you to review that relate to
7 adjusting claims?

8 A. Yes.

9 Q. Okay. Where are those maintained, if you
10 know?

11 A. I know they are on our intranet, National
12 General intranet. There's a claims procedure manual
13 there.

14 Q. Okay. Do you know if within that claims
15 procedure manual there are guidelines or policies or
16 procedures pertaining to adjustment of underinsured
17 motorist claims?

18 A. There are claims handling guidelines, and
19 there would be, yes, guidelines for that.

20 Q. Okay. Is that something you were trained
21 on as part of your employment at National General,
22 just generally, those policies and procedures?

23 A. Yes.

24 Q. So I -- when you started at National
25 General, I assume -- you let me know if I'm wrong --

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1 that there's sort of like a general couple-day or
 2 week training period where you sort of learn the
 3 National General system; is that fair?
 4 A. I met with the manager who hired me for a
 5 couple days, and I read the -- you know, the
 6 handling guidelines as part of that.
 7 Q. Okay. Got it. One of the things I saw in
 8 the claim file was something called a "claim
 9 director score." Are you familiar with that?
 10 A. No.
 11 Q. Do you know anything about what a claim
 12 director score is?
 13 A. I have no idea. I've never heard that.
 14 Q. Okay. Did you notice in reviewing the
 15 claim file here that there was a document entitled
 16 "claim director score"?
 17 A. I did not see that, no, I --
 18 Q. Okay. So if I -- if I were to tell you
 19 that there was a document that said the Hopkins
 20 claim got a score of 847, would that mean anything
 21 to you?
 22 A. No.
 23 Q. Okay. Okay. I want you to walk me
 24 through -- and I want to just first start with your
 25 investigation.

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1 So my understanding is you were assigned
 2 Mr. Hopkins' underinsured motorist claim in kind of
 3 mid-to-late February of last year. Does that sound
 4 right?
 5 A. That sounds right.
 6 Q. Okay. When you -- and the other thing I
 7 noticed -- and let me know if -- if this is correct
 8 or not -- is that the Hopkins claim was assigned to
 9 you because you were in the large loss unit, right?
 10 A. Probably, yes.
 11 Q. Do you know what about the Hopkins claim
 12 made it get assigned to the large loss unit?
 13 A. I don't remember what that was. I didn't
 14 review that note.
 15 Q. You don't remember?
 16 A. I didn't review that note. So I really
 17 don't remember why that was assigned to us.
 18 Q. Okay. Sitting here today, can you tell me
 19 why you think the Hopkins claim was assigned to the
 20 large loss unit?
 21 A. Probably because we were told there was a
 22 closed head injury or something like that. That
 23 would qualify as transfer so that's -- I'm assuming
 24 that's probably what it was.
 25 Q. Okay. So when you were assigned this

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1 claim back in February of 2018, I want you to walk
 2 me through everything you did to investigate Mr.
 3 Hopkins' underinsured motorist claim.
 4 MR. HARRIS: Object to the form.
 5 Go ahead.
 6 A. I can try and do that. I don't have any
 7 notes in front of me, and I would need them really.
 8 So I'll do the best I can.
 9 BY MS. ROSATO:
 10 Q. Well, let me ask you this: Do you have
 11 the claim file there with you?
 12 A. I do not.
 13 Q. Okay.
 14 A. I didn't -- I didn't --
 15 MS. ROSATO: Eliot, do you have the
 16 file for her?
 17 MR. HARRIS: No.
 18 BY MS. ROSATO:
 19 Q. Okay. But you reviewed it to prepare for
 20 your deposition, correct?
 21 MR. HARRIS: Object to the form.
 22 Go ahead.
 23 A. I reviewed a -- I didn't review all the
 24 notes. I reviewed a portion of them. So I -- I can
 25 lead you through it as best I can, based on my

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1 memory.
 2 BY MS. ROSATO:
 3 Q. Okay. Great. Okay. Go ahead.
 4 A. The claim would have come in. I would
 5 have read, you know, all the notes.
 6 I know that we had -- I remember seeing an
 7 email yesterday when I was reviewing the claim that
 8 I responded, I think, to your demand. I would have
 9 read your information that you provided to us, and I
 10 think I asked for some prior information, his prior
 11 medical.
 12 And then I know that we had some
 13 discussions about what we felt the value of the
 14 claim was, and that's when we had a -- a discussion
 15 about, you know, what -- the causation of the
 16 injury. We involved a neurologist, got that report.
 17 So those are the types of investigation
 18 that we did.
 19 Q. Okay. Let me -- let me ask you some more
 20 specific questions.
 21 A. Sure.
 22 Q. So did your investigation essentially
 23 begin once you received the demand?
 24 A. No. I would have -- once I got the file
 25 transferred to me, that's when I would have begun my

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1 investigation.
 2 Q. All right. So as part of your
 3 investigation, did you go through and read the
 4 claim -- the notes already in the claim file, like,
 5 for example, Christina May's notes?
 6 A. Yes.
 7 Q. Okay. Did you note that Christina May had
 8 looked at the claim and she recommended that it be
 9 reserved at \$100,000?
 10 A. I don't recall. I would have read that,
 11 but I don't remember that as I sit here today, that
 12 that was her recommendation.
 13 Q. Okay. Do you remember that she had a note
 14 in the claim file that said it was very possible
 15 that Mr. Hopkins' claim could be worth the \$250,000
 16 policy limit?
 17 A. No, but that would explain why it came
 18 over, if she had that -- that belief.
 19 Q. Okay. Did you note that Christina May
 20 also noted that it would be important to take into
 21 account Mr. Hopkins' being an eggshell?
 22 MS. ROSATO: Object to the form.
 23 A. I would have seen that, but I don't recall
 24 as I sit here today that she wrote that.
 25 BY MS. ROSATO:

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1 Q. Okay. Do -- do you dispute that she wrote
 2 those three things I just went over in the claim
 3 file?
 4 MR. HARRIS: Object to the form.
 5 A. No.
 6 THE WITNESS: Oh, sorry.
 7 A. No.
 8 BY MS. ROSATO:
 9 Q. When you hear that another adjuster wrote
 10 a claim note describing Mr. Hopkins as an
 11 "eggshell," what does that mean to you?
 12 A. That means to me that he is more
 13 susceptible to injury than perhaps somebody else.
 14 Q. Okay. Did you have any reason to disagree
 15 with that assessment by Christina May?
 16 A. Not just by reading her note. I had no
 17 reason to.
 18 Q. Well, after you got his demand and you
 19 reviewed all of his medical records, at that point,
 20 did you have any reason to disagree that she had
 21 described Mr. Hopkins as an "eggshell"?
 22 A. I don't recall whether that was a specific
 23 question that I answered about whether he was an
 24 "eggshell." I would have taken into consideration,
 25 you know, his condition and the impact and the
 1 treatment and what the record said about his injury
 2 rather than labeling him as an "eggshell," if that
 3 makes sense.
 4 Q. Okay. When you got Mr. Hopkins' demand,
 5 did you review all of the medical records that were
 6 provided?
 7 A. Yes.
 8 Q. Did you review all the medical bills that
 9 were provided?
 10 A. Yes.
 11 Q. Okay. Did you do any of your own medical
 12 research after reviewing those materials?
 13 A. I don't recall if I did in this case. If
 14 there's anything I don't understand, typically I
 15 will.
 16 Q. Okay. Do you have access to medical
 17 research at National General?
 18 A. In term -- in what way are you . . .
 19 Q. Is -- does -- does National General
 20 subscribe to anything, for example, UpToDate or, you
 21 know, anything that allows you to -- to access
 22 medical literature?
 23 A. We have access to the internet, and we do
 24 have access to Mitchell Decision Point.
 25 Q. What's Mitchell Decision Point?
 1 A. It's an outside vendor. They will do
 2 billing review, and they have nurses available for
 3 review.
 4 Q. Well, what do you mean when you say
 5 "billing review"?
 6 A. They will review bills for reasonableness,
 7 necessity.
 8 Q. And then what do the nurses do?
 9 A. We can request a nurse's review if we need
 10 to, to review the entire demand.
 11 Q. And what would nurse's review be for
 12 things beyond just reasonableness and necessity of
 13 medical bills, for example, just generally the
 14 injuries being alleged and does this make sense?
 15 A. Yes.
 16 Q. Okay. Have you ever done that before --
 17 A. I think --
 18 Q. -- used the nurses?
 19 A. I've used it maybe two or three times
 20 since I've been there.
 21 Q. And is it fair to say you did not do that
 22 in Mr. Hopkins' case?
 23 A. That's fair to say.
 24 Q. Okay. So do you know or do you remember
 25 -- I'm not sure you answered this question -- if you

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1 did any medical research in Mr. Hopkins' -- for Mr.
 2 Hopkins' claim after looking at his medical records
 3 and bills?
 4 A. I don't recall whether I needed to do that
 5 or not.
 6 Q. If you did need to do that, would that be
 7 noted somewhere in the claim file?
 8 A. Maybe. Maybe not.
 9 Q. Would you do medical research and not note
 10 that in the claim file?
 11 A. It's possible. If I -- if it was a
 12 definition of something that I didn't know what the
 13 word was, I probably would not note that in the
 14 claim file, that I looked it up on the internet.
 15 Q. Okay. So you reviewed Mr. Hopkins'
 16 medical records. You reviewed his medical bills.
 17 You don't know if you did any medical research.
 18 Tell me anything else you did in your
 19 investigation before you made the first offer to him
 20 of \$17,340.
 21 A. I'm not certain if there's anything else
 22 that I did. I would need to look at the notes to
 23 refresh my memory on that.
 24 Q. And you just can't remember sitting here
 25 right now?

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1 A. No. I think that was almost a year ago,
 2 so I don't -- you know, I handle a lot of claims so
 3 I'm not sure which ones I do research on. I know
 4 that I reviewed what you sent in and we evaluated
 5 it. I -- I can't say as I'm sitting here today
 6 whether I did any additional research.
 7 Q. Okay. Before you made the offer of
 8 \$17,340, do you know if you talked to Mr. Hopkins?
 9 A. No. He was represented, so, I did not
 10 speak with him.
 11 Q. Did you ever ask to speak with Mr.
 12 Hopkins?
 13 A. I don't recall asking that.
 14 Q. Okay. Why not?
 15 A. I don't -- I would have to look at the
 16 notes. I'm not sure whether I asked to speak with
 17 him or not.
 18 Q. Okay. Do you have any reason to disagree
 19 with my statement that you never asked to speak with
 20 Mr. Hopkins?
 21 MR. HARRIS: Object to the form.
 22 A. No.
 23 BY MS. ROSATO:
 24 Q. Okay. Do you have any reason to believe
 25 you asked to speak with or get sworn testimony from

1 any of Mr. Hopkins' treating medical providers?
 2 A. No.
 3 Q. Why -- why didn't you ask to speak with,
 4 interview, or get sworn testimony from any of Mr.
 5 Hopkins' treating medical providers?
 6 A. Typically, when a -- an individual is
 7 represented, I will go through his attorney.
 8 And you provided information and -- and I
 9 believe I asked you for some additional evaluation
 10 to value his claim. So I would have possibly asked
 11 that later after receiving a full -- his full
 12 information.
 13 Q. Okay. Is -- isn't it true, Ms. Gordon,
 14 that you did not ask to speak with any of Mr.
 15 Hopkins' treating providers before you made an offer
 16 of \$17,340?
 17 A. Yes, that's true.
 18 Q. Okay. Isn't it also true that you said in
 19 making that offer that National General was not
 20 considering any permanency of Mr. Hopkins' injuries?
 21 MR. HARRIS: Object to the form.
 22 A. I would need to look at my -- my notes to
 23 see whether I had that. I -- I can't -- I don't
 24 disagree with you, but -- since you're looking at
 25 the notes, but I -- I don't recall making that

1 determination.
 2 BY MS. ROSATO:
 3 Q. You don't recall that you made that
 4 determination?
 5 MR. HARRIS: Object to the form.
 6 Asked and answered.
 7 You can answer again.
 8 A. No.
 9 BY MS. ROSATO:
 10 Q. Okay. In making a determination that
 11 National General was not considering any permanency
 12 of Mr. Hopkins' injuries, what were you relying on
 13 to make that determination?
 14 A. I remember looking over a note yesterday
 15 where I believe he -- his records indicated his
 16 headaches had resolved. You know, I -- I'm sure I
 17 based it -- if I said that statement, I based it on
 18 whatever medical records that we had.
 19 Q. What weight did you give in making the
 20 \$17,000 to Mr. Hopkins' treating neurologist's
 21 opinions?
 22 A. I wish I could tell you. I don't have my
 23 notes. I'd need to look at my evaluation, and
 24 that's not something that I looked at in depth
 25 yesterday, or I'd have to look at his medical

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1 records. So I'm -- I really don't know what weight
 2 I gave to that. It -- I'm sure I considered it.
 3 Q. Okay. If his treating neurologist had a
 4 statement in her record that said that his balance
 5 issues were permanent, okay, and if you had made the
 6 statement that National General was not considering
 7 any permanency when you made the \$17,000 offer,
 8 isn't it true that National General was giving no
 9 weight to that treating neurologist's statement?
 10 MR. HARRIS: Object to the form.
 11 A. I don't believe we gave no weight to that
 12 statement, but I believe at that point, we still had
 13 questions of causation of whether his ongoing
 14 balance issues were permanent as a result of this
 15 accident. So there were still causation issues.
 16 BY MS. ROSATO:
 17 Q. Okay. Sitting here today having reviewed
 18 your claim file -- did you say yesterday that's when
 19 you reviewed your claim file?
 20 A. I reviewed part of it, yes. Not the
 21 entire thing.
 22 Q. Okay. And that was yesterday?
 23 A. Yes.
 24 Q. Okay. So sitting here today, having re --
 25 reviewed a part of the claim file yesterday, can you

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1 tell me the basis for offering Mr. Hopkins \$17,340?
 2 A. I -- I know I reviewed all of his medical
 3 records and I remember that he had a significant
 4 prior injury. And the offer that we made was based
 5 on what we believe the -- the records that you
 6 provided, what they showed as the appropriate value
 7 for the claim based on the injuries from this
 8 accident.
 9 Q. Okay. And can you tell me what
 10 consideration you gave to his treating neurologist's
 11 opinions as set forth in her records?
 12 A. That was part of the entire picture. I
 13 looked at all the records and took those into
 14 consideration with the rest of the materials.
 15 I can't -- I don't have a percentage
 16 weight. I don't know what exactly it is you're
 17 looking for in terms of how much weight I gave it.
 18 Q. Isn't it true that on the same day that
 19 you made Mr. Hopkins the \$17,000 offer you had
 20 requested and received approval to have the claim
 21 reserved at \$84,000?
 22 A. Yes.
 23 Q. Okay. Why didn't you offer Mr. Hopkins
 24 \$84,000?
 25 A. We feel the offer that was made was

1 appropriate, and there is always a range of value.
 2 Q. Okay. And so why didn't you offer the
 3 \$84,000 if you had reserved the claim at that
 4 amount?
 5 A. Reserving a claim doesn't necessarily
 6 reflect the settlement value of the claim. It's a
 7 reserve.
 8 Q. Okay. I'm going to go through just a few
 9 of the -- I want to go through a general timeline
 10 with you, a few of the facts, and just make sure --
 11 tell me if you agree that that's a fact in the case
 12 or tell me if you disagree. Okay?
 13 A. Okay.
 14 Q. That on April 23rd, 2016, Mr. Hopkins was
 15 involved in a rear-end collision; is that correct?
 16 A. Yes, I believe.
 17 Q. And National General --
 18 A. I don't have the date. I don't have the
 19 date in front of me --
 20 Q. Okay.
 21 A. -- but I'm trusting that that's correct,
 22 yes.
 23 Q. Okay. You -- you don't dispute that,
 24 right?
 25 A. Right.

1 Q. Okay. And for this claim, do you agree
 2 that the liability of the following driver was
 3 clear?
 4 A. Yes.
 5 Q. Okay. Mr. Hopkins hadn't done anything --
 6 he was not at fault in any way causing that
 7 collision, right?
 8 A. Not that I'm aware of.
 9 Q. Okay. And he was injured in the
 10 collision, correct?
 11 A. That's what he tells us. I wasn't there,
 12 so I don't know, but that's -- that's what we
 13 understand. That's what we're being told.
 14 Q. Okay. Do you have some reason to believe
 15 he was not injured in this collision?
 16 A. No.
 17 Q. Okay. You agree that Mr. Hopkins saw a
 18 doctor within a day and he reported balance issues
 19 immediately to that first doctor?
 20 A. I will take your word for it. I did not
 21 review the records.
 22 Q. Okay. Do you have any reason to disagree
 23 with that?
 24 A. No.
 25 Q. Okay. Do you have any reason to disagree

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1 with Mr. Hopkins' report that his symptoms started
 2 the morning after the collision as soon as he woke
 3 up?
 4 A. No.
 5 Q. Okay. You agree, I assume, that he did
 6 have a severe traumatic brain injury in 2011?
 7 A. That's what we're told, yes.
 8 Q. Okay.
 9 A. I don't have those records. So I didn't
 10 have the records so I don't know, but that's my
 11 understanding.
 12 Q. Well, one of the records that you did have
 13 was a record from four years after that collision
 14 where he was seeing his doctor and the reports were
 15 that he had recovered extremely well from that
 16 traumatic -- traumatic brain injury, correct?
 17 A. Okay. Yes, I'm sure if -- I -- like I
 18 said, I do --
 19 Q. Do you remember that record?
 20 A. I don't have an independent recollection
 21 of any of the records because I did not review them
 22 before I came in here today. So I will take your
 23 word for it that that's -- that we have that because
 24 you're the one that provided that to us, so I'm sure
 25 we had it.

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1 Q. Okay. And you agree that this particular
 2 claim, the at-fault driver paid the \$25,000 policy
 3 limits to Mr. Hopkins, correct?
 4 A. Correct.
 5 Q. And he concluded that settlement after
 6 receiving permission from National General, right?
 7 A. Right.
 8 Q. Okay. When you evaluated Mr. Hopkins'
 9 claim, did you ever look up the Washington --
 10 basically, the jury instruction for what his life
 11 expectancy was at the time of the collision?
 12 A. I don't remember doing that.
 13 Q. Okay. Well, why not? I mean why didn't
 14 you do that?
 15 A. I don't remember whether I did or didn't
 16 do that. I . . .
 17 Q. Okay. If a claimant, a National General
 18 insured, is making a claim with a report of a
 19 permanent injury, is going to the relevant state and
 20 looking up what the life expectancy of that person
 21 is that something that's part of your normal
 22 practice?
 23 A. Yes.
 24 Q. Okay. In doing that, is -- when you do
 25 that research, is that something that you would note

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1 in the claim file?
 2 A. Yes.
 3 Q. Okay. Because you need to know when
 4 you're considering a permanent injury what that
 5 person's life expectancy is to try and figure out
 6 the value of that permanent injury, correct?
 7 A. Correct.
 8 Q. Okay. So if there are no notes in this
 9 claim file about you doing any research about Mr.
 10 Hopkins' life expectancy, it's because you were not
 11 considering his -- any permanency of his injury,
 12 correct?
 13 MR. HARRIS: Object to the form.
 14 A. Correct. If we did not feel there was a
 15 permanent injury, there would be no reason for us to
 16 look up his life expectancy.
 17 BY MS. ROSATO:
 18 Q. Okay. At the time you made the \$17,000
 19 offer to Mr. Hopkins, what information did you have
 20 in your investigation to support the notion that
 21 this was not a permanent injury for Mr. Hopkins?
 22 A. I had the information that you provided to
 23 us.
 24 Q. Okay. At the moment you made the \$17,000
 25 offer that did not consider permanency, you had not

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1 yet had an independent doctor look at this claim,
 2 correct?
 3 A. Correct.
 4 Q. Okay. In evaluating his claim before you
 5 made the \$17,000 offer, did you have any issue with
 6 the reasonableness and necessity of the medical
 7 bills he submitted?
 8 A. I don't believe so. I think that they
 9 were paid by PIP.
 10 Q. Correct. That's right.
 11 So you weren't disputing the -- any of the
 12 physical therapy, the balance therapy, the neurology
 13 appointments, you weren't disputing that any of that
 14 was related to the collision, correct?
 15 A. I -- I'm not sure whether I -- I don't
 16 think so. I think that we -- I included that.
 17 Q. Okay.
 18 A. But I'd need to look at my evaluation, and
 19 I didn't review that in detail.
 20 Q. Okay. Tell me why you decided to have a
 21 records review done.
 22 A. When we evaluated the claim, I think you
 23 and I had a discussion about a physical therapy note
 24 where it reflected Mr. Hopkins said he had these
 25 issues before the accident, the issues he was

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1 claiming were as a result of the accident. We had a
 2 disagreement about the value of the claim. You felt
 3 strongly that his condition was related to the
 4 accident.
 5 I'm not a doctor so I wanted to consult a
 6 doctor. We always, you know, want to make sure that
 7 we're evaluating claims fairly so that's why we did
 8 that.
 9 Q. Okay. When Mr. Hopkins reported to you
 10 that that one sentence in one physical therapy
 11 record was an error, that he had not had balance
 12 issues or gravitational vertigo before this
 13 collision, what weight did you give to Mr. Hopkins'
 14 response?
 15 A. I took it into consideration, but there
 16 was pretty much detail in that note, more than just
 17 a statement of this is pre-existing. I think there
 18 was more information about it, and because of the
 19 dispute, we wanted to give him the benefit of the
 20 doubt; and since he disputed it, that's why we went
 21 ahead and had the records review.
 22 Q. Other than that one sentence in that
 23 record, what other information do you think was in
 24 that record or any other records to suggest that his
 25 balance issues and gravitational vertigo preexisted

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1 this collision?
 2 A. I would need to look at the medical
 3 records to see what they say. I -- I'm not -- I
 4 can't -- really can't answer that.
 5 Q. But it sounds like you do think that there
 6 was something other than that one sentence that led
 7 you to conclude this may be pre-existing?
 8 A. Possibly.
 9 Q. Okay. Do you know one way or another?
 10 A. I don't know one way or another. I know
 11 that I -- that -- I do recall that physical therapy
 12 note specifically, but the other records I would
 13 have to review to see what else was in there and I
 14 didn't do that before today.
 15 Q. Okay. Tell me how you selected Dr. Kutsy.
 16 A. I contacted one of our panel defense
 17 counsel and asked him for somebody to send the
 18 records to.
 19 Q. Okay. Did you know Dr. Kutsy at all
 20 before you selected him?
 21 A. No. I relied on Defense.
 22 Q. You relied on a defense attorney, right?
 23 A. Correct.
 24 Q. And that was Mr. Wilson in Portland?
 25 A. Yes.

1 Q. Okay. Is he panel counsel? Is that how
 2 you got ahold of him?
 3 A. Yes.
 4 Q. So other than just Mr. Wilson saying, "Try
 5 Dr. Kutsy," there was no other reason that you
 6 selected him?
 7 A. Right. He gave me a few doctors, and I
 8 reached out to a -- a few of them and he's the one
 9 that was -- that responded and we were able to get
 10 the information to more quickly.
 11 Q. Okay. Did you have any information about
 12 Dr. Kutsy's background or his prior forensic work
 13 before you selected him to do the records review on
 14 Mr. Hopkins' claim?
 15 A. I looked at his CV. I did not have any
 16 other experience with him.
 17 Q. Did you know at the time that you hired
 18 him that over 95 percent of his forensic work is
 19 done for insurance companies?
 20 A. No.
 21 Q. Did you know at the time you hired him
 22 that he makes over to \$200,000 a year doing forensic
 23 work for insurance companies?
 24 A. No.
 25 Q. Okay. Why did you decide to hire Dr.

1 Kutsy to do a records review rather than request to
 2 talk to Dr. -- to Mr. Hopkins' treating neurologist,
 3 Dr. Taylor?
 4 A. I believe we had Dr. Taylor's notes so we
 5 would have had a record of his thoughts and exam.
 6 Q. Okay. Any reason why you didn't ask to
 7 talk with her to ask the same questions that you
 8 asked of Dr. Kutsy?
 9 A. I believe the records were clear on what
 10 the doctor's opinion was.
 11 Q. Do you remember what that opinion was?
 12 A. I would have to look at the record.
 13 Q. Okay. Do you recall that Dr. Taylor's
 14 conclusion is that Mr. Hopkins has gravitational
 15 vertigo and balance issues related to the 2016
 16 collision and that those are permanent conditions?
 17 A. I don't recall that that's what's in the
 18 record, but I'll take your word for it because I'm
 19 sure you do -
 20 Q. Okay.
 21 A. -- you know.
 22 Q. Okay. Okay. Did you have some reason to
 23 believe when you hired Dr. Kutsy that Dr. Taylor had
 24 that diagnosis and her opinions were wrong, that
 25 there was something wrong with those opinions?

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Obj. 402, 403. MIL #13 and 14

1 A. I must have believed that there was a
2 question about them. Whether they were wrong or
3 not, I didn't know because I'm not a doctor. So we
4 wanted to hire a doctor to help us understand that.
5 Q. Okay. National General paid Dr. Kutsy, it
6 looks like, \$1,500 for his review; is that right?
7 A. I don't remember, but that sounds right.
8 Q. Okay. Why did you send Dr. Kutsy property
9 damage estimate and property damage photos for his
10 review?
11 A. So he would understand the nature of the
12 impact.
13 Q. Okay. Is that something, to your
14 knowledge, that a neurologist typically has when
15 they're evaluating causation of injuries for a
16 patient?
17 A. I don't know.
18 Q. Okay. You agree Dr. Kutsy never saw or
19 met or examined Mr. Hopkins, right?
20 A. Right.
21 Q. Right. He just looked at the records you
22 provided him, correct?
23 A. Correct.
24 Q. Okay. And you got back a report from
25 Dr. Kutsy, right?

IF 57:1-2 is allowed

1 I believe he did give him, you know, some injury
2 from the accident.
3 Q. Okay. Do you have any understanding of
4 how often Dr. Kutsy renders the opinion that someone
5 involved in a collision should be better within
6 three months?
7 A. No. This is the only report I've ever
8 seen from Dr. Kutsy.
9 Q. Okay. And you -- you do have a memory, it
10 sounds like, that one of Dr. Kutsy's opinions was
11 that Mr. Hopkins did not sustain a concussion.
12 A. Yes.
13 Q. Okay. Do you remember what Dr. Kutsy's
14 basis for that opinion was?
15 A. I believe it was based on his complaints
16 following the accident that weren't consistent with
17 a concussion.
18 Q. And do you recall that he -- he had
19 actually two primary reasons why he said Mr. Hopkins
20 didn't sustain a concussion?
21 A. I remember that one. I don't recall the
22 other one.
23 Q. Okay. Do you recall that the first one
24 was that Mr. Hopkins did not have loss of
25 consciousness?

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1 A. Yes.
2 Q. And in that report, you agree with me that
3 Dr. Kutsy disagreed with every single one of
4 Mr. Hopkins' treating providers?
5 MR. HARRIS: Object to the form.
6 A. I would need to read his report, but I'll
7 take your word for it.
8 BY MS. ROSATO:
9 Q. Okay. Well, Dr. Kutsy, he disagreed with
10 Dr. Taylor, the neurologist, right?
11 A. Okay.
12 Q. Well, do you agree with that?
13 A. I -- I would need to read his report. I
14 didn't read that before I came, so I can't
15 specifically say what his response was to each of
16 the physicians.
17 Q. Okay. Do you recall what Dr. Kutsy's
18 opinions were after doing the records review?
19 A. I believe Dr. Kutsy said that he did not
20 see any reason why he would have sustained a
21 concussion in this accident.
22 I believe he said a soft tissue injury was
23 reasonable, and I believe there was another
24 diagnosis of some type of vertigo and that he said a
25 treatment for three months would be appropriate. So

1 A. I'll take your word for that.
2 Q. Okay. And do you recall that the second
3 opinion he gave was that basically there's no
4 evidence for the notion that someone that's had a
5 prior head injury is more prone to a concussion?
6 A. I remember reading that, yes.
7 Q. Okay. When you read that no loss of
8 consciousness was evidence that Mr. Hopkins did not
9 sustain a concussion, did you go do any of your own
10 independent research to determine if that was a
11 medically sound opinion?
12 A. I believe that there were other things he
13 mentioned like nausea or dis -- loss of
14 consciousness was not the only factor he looked at
15 when determining whether he had a concussion, I did
16 not do any of my own research. You know, you hope
17 that the neurologist is, you know, qualified to make
18 that distinction, and any research I do online, I
19 can't imagine would dispute what he had to say.
20 Q. How many head injury cases have you
21 adjusted over the years?
22 A. I am not sure. Several.
23 Q. More than ten?
24 A. Probably.
25 Q. Do you think more than 100?

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1 A. No.
 2 Q. Okay. And you said you have access to the
 3 internet there at National General?
 4 A. Yes.
 5 Q. Okay. Have you ever -- ever, and with --
 6 including with respect to Mr. Hopkins' claim, done
 7 research to find out whether or not concussions are
 8 usually associated with loss of consciousness?
 9 A. I don't know what you're asking.
 10 Q. Okay. Well, I'm asking -- you got back a
 11 report from Dr. Kutsy, who concluded, contrary to
 12 all of Mr. Hopkins' treating providers, that
 13 Mr. Hopkins did not suffer a concussion, right?
 14 A. Right.
 15 Q. Okay. And the lead reason that Dr. Kutsy
 16 gave for Mr. Hopkins not suffering a concussion was
 17 that he did not lose consciousness.
 18 That was the first reason he listed,
 19 right?
 20 A. I would need to read what he said. I
 21 believe that was one in a list of factors that he
 22 looked at. It -- that was not a standalone.
 23 Just because he didn't lose consciousness
 24 doesn't mean he didn't sustain a concussion. I
 25 think there were other factors there.

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1 Q. Right, and we just talked about that.
 2 There were actually two main factors:
 3 The first was that there was no loss of
 4 consciousness, right, and the second was that just
 5 because Mr. Hopkins had had a prior head injury,
 6 that doesn't make him more prone to a later
 7 concussion. Those were his two primary reasons,
 8 right?
 9 MR. HARRIS: Object to the form.
 10 A. If you could read to me that sentence
 11 where he has the list of items, I would be able to
 12 better answer that question.
 13 BY MS. ROSATO:
 14 Q. Well, I don't have the sentence in front
 15 of me.
 16 A. Okay.
 17 Q. Let me see.
 18 A. I do remember there was a list. Loss of
 19 consciousness was included in the list, so it was
 20 not just that from what I remember.
 21 Q. Okay. So his conclusion is no concussion
 22 was suffered, and his primary reasons are no loss of
 23 consciousness and prior concussions don't make Mr.
 24 Hopkins more prone.
 25 And then he goes on to say, like you said,

1 "the diagnosis is minor cervical strain and benign
 2 vertigo. Should have been better in three months."
 3 Does that sound right?
 4 MR. HARRIS: Object to the form.
 5 A. Yes.
 6 BY MS. ROSATO:
 7 Q. Okay. So what I am trying to understand
 8 is when Dr. Kutsy gave you a report that disagreed
 9 with all of Mr. Hopkins' treating providers and he
 10 concluded that there was no concussion and the first
 11 reason for that was no loss of consciousness, did
 12 you, based on your training, experience, having
 13 handled other head injury cases, look at that
 14 statement and say, "I'm going to check the medical
 15 literature to see if that makes sense"?
 16 MR. HARRIS: Object to the form.
 17 That misstates the -- misstates Dr. Kutsy's report.
 18 A. I did not look at that because my
 19 recollection is I took that as just one piece in a
 20 string of reasons why he felt there was no
 21 concussion. I didn't believe that it was just
 22 because there was no loss of consciousness.
 23 BY MS. ROSATO:
 24 Q. Okay. Ms. Gordon, are you aware that the
 25 medical literature reports that in the vast majority

1 of concussions, there is no loss of consciousness?
 2 A. I am not aware of that, but that is not
 3 surprising to me.
 4 Q. Okay. Did you do any of your own
 5 independent research to check the soundness of Dr.
 6 Kutsy's conclusion that a prior head injury does not
 7 make him more prone to a concussion?
 8 A. No.
 9 Q. Okay. Would it surprise you to know that
 10 the medical literature, for example, the Center For
 11 Disease Control website that has facts on brain
 12 injury and concussion, is directly to the contrary
 13 of that statement by Dr. Kutsy?
 14 MR. HARRIS: Object to the form.
 15 A. Would it --
 16 MR. HARRIS: You can answer if you
 17 know.
 18 A. Would it surprise me? I -- no. I know
 19 that there are a lot of differing reports with
 20 injuries and different opinions. So no, it wouldn't
 21 surprise me.
 22 BY MS. ROSATO:
 23 Q. Okay. Would you have any reason to
 24 disagree with the Center For Disease Control's facts
 25 statement on brain injury and concussion?

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1 A. I would not. I'm not a doctor.
 2 Q. Okay. Does it make common sense to you to
 3 conclude that someone that has had a prior brain
 4 injury is not more prone to concussion?
 5 A. Would you say that again, please?
 6 Q. Sure. Does Dr. Kutsy's opinion that
 7 because Mr. Hopkins suffered a prior traumatic brain
 8 injury, he is not more prone to concussion, does
 9 that opinion make common sense to you?
 10 A. Not necessarily. I -- you know, I -- I
 11 think it depends upon the individual and what kind
 12 of injury they suffered.
 13 So like I said, I'm not a doctor and I
 14 don't know, you know, the different areas, you know,
 15 where they would suffer an injury or, I don't know
 16 -- didn't know the nature of his prior injury. So I
 17 really don't know.
 18 So that -- that doesn't surprise me. I
 19 mean, it's not a surprising statement. Does that
 20 answer your question?
 21 Q. Sure. Let me just ask you this:
 22 When you got Dr. Kutsy's report and you
 23 read his opinion that Mr. Hopkins should have been
 24 better in three months and had a mild strain and
 25 benign vertigo, did that seem reasonable to you?

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1 A. It --
 2 MR. HARRIS: Object to the form.
 3 Misstates the report.
 4 Go ahead.
 5 A. It seemed reasonable that -- based upon
 6 the whole picture, that that was a reasonable
 7 conclusion.
 8 BY MS. ROSATO:
 9 Q. Okay. Did it seem reasonable to you for
 10 Dr. Kutsy to conclude that any ongoing gravitational
 11 vertigo or balance issues were because he lived on a
 12 boat as opposed to this collision?
 13 A. It -- like I said, he -- I'm not a doctor.
 14 He is. It wasn't a surprising concept.
 15 Q. Okay. After you received Dr. Kutsy's
 16 report, did you increase the offer to Mr. Hopkins?
 17 A. Yes.
 18 Q. Okay. What did you increase the offer to?
 19 A. To 40,000.
 20 Q. Why did you wait two months after getting
 21 Dr. Kutsy's report to make that offer?
 22 A. I believe that I called you right away to
 23 talk about it and had in my notes that I was going
 24 to extend that offer, and then I don't believe we
 25 spoke for that period of time.

1 Q. Okay. Isn't it true that you only made
 2 the \$40,000 to Mr. Hopkins after he notified
 3 National General that he was going to be making
 4 claims for failure to act in good faith?
 5 A. I am not certain. I believe that the --
 6 we had reevaluated the case and were planning on
 7 extending that offer before that happened. I think
 8 I left you a message and then didn't hear back from
 9 you and I didn't follow up until after the suit was
 10 filed.
 11 Q. Okay. Here's something I need to try and
 12 understand from you, and I apologize for the length
 13 of this question.
 14 When you made Mr. Hopkins the offer of
 15 \$17,000, at that point in time, you were accepting
 16 that all of his medical treatment over an 18-month
 17 or almost two-year period had been reasonable and
 18 necessary, right?
 19 A. I would have to look at my evaluation, but
 20 I'm assuming so.
 21 Q. Okay. And you then got a report from
 22 Dr. Kutsy where he said Mr. Hopkins should have been
 23 better and stopped treating after three months,
 24 right?
 25 A. Right.

1 Q. Correct?
 2 A. Correct.
 3 Q. Why, then, did you increase the offer to
 4 \$40,000 when Dr. Kutsy actually disagreed with your
 5 PIP adjusters?
 6 A. That's a good question. I believe -- I
 7 would need to look at my evaluation, but perhaps I
 8 did not consider maybe all of his physical therapy,
 9 or maybe Dr. Kutsy's report made me believe that
 10 there was a little more of an injury than what I had
 11 considered in my evaluation. I would need to look
 12 at my evaluation and the records again to answer
 13 those questions.
 14 Q. Okay.
 15 MR. HARRIS: Counsel, can we take a
 16 break when you're ready?
 17 MS. ROSATO: Yeah. I actually have,
 18 like, two more questions --
 19 MR. HARRIS: Okay.
 20 MS. ROSATO: -- if you can believe
 21 that. You -- you can take a break, though, if you
 22 want to. That's completely your prerogative. Just
 23 let me know.
 24 MR. HARRIS: No. If you have two
 25 questions, let's just go ahead.

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1 MS. ROSATO: Okay.
 2 BY MS. ROSATO:
 3 Q. Ms. Gordon, I want you to assume that
 4 Dr. Kutsy's report reached the same conclusions that
 5 Mr. Hopkins' treating neurologist, Dr. Taylor, has
 6 reached, okay?
 7 A. Okay.
 8 Q. That Mr. Hopkins suffered a concussion,
 9 that he has gravitational vertigo and balance issues
 10 related to the collision, and that those are -- he's
 11 gotten better but he's not going to get all the way
 12 better and those are permanent conditions for the
 13 remaining 14 years of his life, okay?
 14 A. Okay.
 15 Q. Okay. How would National General value
 16 that claim?
 17 MR. HARRIS: Object to the form.
 18 A. I would probably consult with our defense
 19 counsel to see what kind of value to place on that.
 20 There are, I think, a lot of factors that would go
 21 into that.
 22 I would probably look at, you know, his
 23 lifestyle and his -- the effect on him and, you
 24 know, how he feels about that, how's he able to
 25 cope. So I think there's a lot that goes into that.

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1 So I really -- you know, I don't -- I
 2 can't give you a dollar figure, but I would look at
 3 those -- those items.
 4 Q. Okay. And the fact of the matter is
 5 that's not an evaluation you've done at this point
 6 in time, is it?
 7 MR. HARRIS: Object to the form.
 8 You can answer if you understand.
 9 THE WITNESS: Okay. I think I
 10 understand.
 11 A. Not yet.
 12 BY MS. ROSATO:
 13 Q. Okay.
 14 MS. ROSATO: I don't have any other
 15 questions.
 16 Eliot, do you have any?
 17 MR. HARRIS: I do not at this time.
 18 MS. ROSATO: Okay. Great.
 19 VIDEOGRAPHER: We're going off the
 20 record.
 21 MS. ROSATO: Thank you for your time.
 22 VIDEOGRAPHER: We're going off the
 23 record at approximately 1:17 p.m.
 24 MS. ROSATO: You're reserving
 25 signatures?

1 MR. HARRIS: Yes, we are.
 2 MS. ROSATO: Okay. Great.
 3 Nice to meet you, Ms. Gordon. I am
 4 always fast. I try to keep it as painless as
 5 possible.
 6 THE WITNESS: Thank you.
 7 COURT REPORTER: And can I get your
 8 order real quickly, ma'am?
 9 MS. ROSATO: Yes. I would like an
 10 e-transcript, and I'd also like the video, please.
 11 MPEG1, and we will do the syncing.
 12 VIDEOGRAPHER: Okay. Great.
 13 MS. ROSATO: Great. Thank you.
 14 COURT REPORTER: How about you? Sir,
 15 how about you?
 16 MR. HARRIS: I will take the e-tran,
 17 please.
 18 VIDEOGRAPHER: Do you need the video?
 19 MR. HARRIS: I'll let you know about
 20 the video.
 21 VIDEOGRAPHER: Okay.
 22 MR. HARRIS: Probably not, but I'll
 23 let you know.
 24 (WHEREIN, the proceedings were concluded
 25 in the matter at 1:17 p.m.)

1 CERTIFICATE OF REPORTER
 2
 3 I, Susan J. Pybas, CCR, No.
 4 1446(T) within the State of Missouri, do hereby
 5 certify that the witness whose testimony appears in
 6 the foregoing deposition was duly sworn by me; that
 7 the testimony of said witness was taken by me to the
 8 best of my ability and thereafter reduced to
 9 typewriting under my direction; that I am neither
 10 counsel for, related to, nor employed by any of the
 11 parties to the action in which this deposition was
 12 taken, and further, that I am not a relative or
 13 employee of any attorney or counsel employed by the
 14 parties thereto, nor financially or otherwise
 15 interested in the outcome of the action.
 16
 17
 18 _____
 19 Susan J. Pybas, CCR
 20
 21
 22
 23
 24
 25